



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Shuyuan Zhang, Capucine Thwin  
and Zheng Wu

Serial No.: 08/975,519

Filed: November 20, 1997

For: AN IMPROVED METHOD FOR THE  
PRODUCTION AND PURIFICATION OF  
ADENOVIRAL VECTORS

Group Art Unit: 1641

Examiner: Unknown

Atty. Dkt. No.: INGN:058/HYL

A handwritten signature in black ink, appearing to read "SLH".

CERTIFICATE OF MAILING 37 C.F.R. 1.8	
I hereby certify that this correspondence is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date below:	
May 22, 1998 DATE	Steven L. Highlander

PETITION UNDER 37 C.F.R. § 1.47(b)

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

Applicants hereby petition under 37 C.F.R. § 1.47(b) to make the above-identified application for patent without the consent of one of the inventors.

Dr. Toohyon Cho is an inventor in this application who refuses to sign the Oath and Declaration. Submitted with this Petition is the Declaration of Kevin S. Casement Under 37 C.F.R. § 1.47 attesting to the facts and last known address of inventor Cho. Exhibit A to his

Declaration is the Employee Confidential Disclosure Agreement signed by inventor Cho during his employment by the assignee of this application, Introgen Therapeutics, Inc. Also attached to this document is a copy of the assignment of the inventors assigning this application to Introgen Therapeutics, Inc.

Assignee Introgen Therapeutics, Inc. has attempted to reach inventor Cho at the following address, and inventor Toohyon Cho has refused to sign the Oath and Declaration:

874 Yorkchester, #102  
Houston, Texas 77079

Pursuant to 37 C.F.R. § 1.17, a check in the amount of \$130.00 is enclosed, which is the process fee (\$130.00) for this Petition.

If the check is inadvertently omitted, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Assistant Commissioner is authorized to deduct or credit said fees from or to Arnold, White & Durkee Deposit Account No. 01-2508/INGN:058/HYL.

Respectfully submitted,



Steven L. Highlander  
Reg. No. 37,642  
Attorney for Applicant

ARNOLD, WHITE & DURKEE  
P.O. Box 4433  
Houston, Texas 77210-4433  
(512) 418-3000

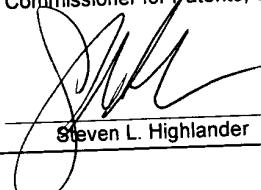
Date: May 20, 1998



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37 C.F.R 1.8

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Date

  
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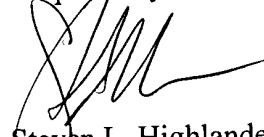
Sir:

Pursuant to 37 C.F.R. § 1.136(a), Applicants petition for an extension of time of one month to and including May 23, 1998 in which to respond to the Notice to File Missing Parts dated February 23, 1998.

Pursuant to 37 C.F.R. § 1.17, a check in the amount of \$2,436.00 is enclosed, which includes the process fee (\$110.00) for a one month extension of time.

If the check is inadvertently omitted, or should any additional fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to the enclosed materials, or should an overpayment be included herein, the Assistant Commissioner is authorized to deduct or credit said fees from or to Arnold, White & Durkee Deposit Account No. 01-2508/INGN:058/HYL.

Respectfully submitted,



Steven L. Highlander  
Reg. No. 37,642  
Attorney for Applicant

ARNOLD, WHITE & DURKEE  
P.O. Box 4433  
Houston, Texas 77210-4433  
(512) 418-3000

Date: May 22, 1998

PATENT

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In re Application of  
Zhang et al

Serial No. 08/975,519

Filed: November 20, 1997

For: AN IMPROVED METHOD FOR THE  
PRODUCTION AND PURIFICATION  
OF ADENOVIRAL VECTORS

§§§§§ Group Art Unit: Unknown

§§§§§ Examiner: Unknown

§§§§§ Atty. Dkt.: INGN:058/HYL

CERTIFICATE OF MAILING  
37 C.F.R. 1.8

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May 22, 1998

Date

Steven L. Highlander

DECLARATION OF DR. KEVIN S. CASEMENT UNDER 37 C.F.R. §1.47

Hon. Asst. Commissioner  
for Patents and Trademarks  
Washington, D. C. 20231

I, Kevin S. Casement, Ph.D., declare that:

1. I am a U.S. citizen residing at 2750 Holly Hall, #1218 in Houston, Texas. I am employed as a Scientific Advisor with the law firm of Arnold, White & Durkee, legal counsel representing Introgen Therapeutics, Inc., assignee of the aforementioned patent application.

2. Dr. Toohyon Cho is a former employee of Introgen Therapeutics, Inc., an entity to which all intellectual property rights of the present invention have been assigned as a condition of employment (Exhibit A), and co-inventor of the above-captioned application

3. In the normal course of business, I contacted Dr. Cho by phone and informed him of oath and declaration papers requiring his signature, to which he agreed to sign. I forwarded the papers on February 4<sup>th</sup> to Dr. Cho via Federal Express at his last known address of 874 Yorkchester, #102, Houston TX 77079. I contacted Dr. Cho by phone on February 6<sup>th</sup> to follow-up, and he indicated his unwillingness to sign the papers. I then contacted Dr. Cho again by phone on February 10<sup>th</sup> requesting signature of the papers and he again refused to sign.

4. I hereby declare that all statements made herein of my knowledge are true and that all statements made herein on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under § 1001 of Title 18 of the U.S. Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

5/14/98  
Date

Kevin S. Casement

Kevin S. Casement, Ph.D.



## INTROGEN THERAPEUTICS, INC.

### Employee Confidential Disclosure Agreement

The growth and success of Introgen Therapeutics, Inc. ("Introgen") are largely dependent on two key assets, our proprietary information and our highly competent employees. Our employees are obtained by recruiting the best people available and giving them opportunities for personal and professional growth. We retain them by giving them opportunities to advance and share in the success of Introgen. Our proprietary information (confidential items and information not generally known outside of Introgen) is obtained by research and product development, product improvements, the development of marketing methods, and service to customers. Many Introgen employees make major contributions. These result in a pool of information and expertise, which enables Introgen to conduct its business with unusual success, and thus with unusual potential for its employees. However, this potential exists only as long as this information and expertise are retained within Introgen. Once generally known, this information gives no advantages to Introgen, its employees or its stockholders.

In effect, all Introgen employees have a common interest and responsibility in seeing that no one employee accidentally or intentionally discloses or distributes this pool of information and expertise in an unauthorized manner. To help protect you, other employees and Introgen against such disclosure, this Employee Agreement has been prepared so that we have a common understanding concerning our mutual responsibilities in this connection. Please read it carefully so that you may understand its importance.

Toohyon Cho  
Employee Name

I agree with Introgen as follows:

1. Defined Terms: The following definitions will have the meanings indicated when used in this document:

- (a) Employee means a person hired by Introgen on either a permanent, temporary, or undefined basis, and for purposes of this Agreement only, includes independent contractors. I am an employee of Introgen (as defined herein).
- (b) Employment Period means the period while I am an employee of Introgen.
- (c) Confidential Information means any proprietary information, materials, or trade secrets or know-how, (whether or not patentable), or any similar items owned by or in the possession of Introgen, and any such items developed for the benefit or on behalf of Introgen by The University of Texas M.D. Anderson Cancer Center (UTMDACC), including (without limitation) cell-free translation, transcription and other *in vitro* systems, cloning vectors, DNA sequences, cell strains, biological substances and compounds, analytical or preparative methods, records, files, memoranda, notes, computer software, computer files, computer programs, computer databases, reports, price lists, customer lists, drawings, plans, sketches, laboratory notebooks, reprints, experimental data, reports, sources of materials or supply, patent strategies, consultants and plans or strategies concerning business, and employment and compensation policies, including any negative developments, which are communicated to, acquired by, learned of, or developed by me during the course of my employment with Introgen including information concerning the existence, scope or activities of any research and development project of Introgen. All copies and reproductions of Introgen confidential items, whether on paper, in a computer readable medium, or in any other form, are also confidential items.
- (d) Invention means any invention, original work of authorship, development, concept, trade secret, discovery, innovation or improvement (whether or not patentable, or registrable under copyright or similar laws) made, initiated, conceived, or first actually or constructively reduced to practice by me, solely or jointly with others:
  - (i) which results from any work for Introgen, any use of Introgen's premises or property, or any use of Introgen's confidential information, confidential items or other resources;
  - (ii) which relates to any method, process, apparatus, laboratory practice, or know-how useful to or being developed by Introgen in connection with any existing or planned business of Introgen or any actual or anticipated research or development of Introgen; or

- (iii) which relates to any product, article of manufacture, or composition of matter being developed, made, sold, or used in connection with Introgen's business or Introgen's research or development.

However, where and to the extent required by applicable state statute, this Agreement shall not require assignment to Introgen of the rights in an invention if no equipment, supplies, facilities, trade secrets, confidential information, or confidential items of Introgen was used, and the invention was developed entirely on my own time, unless:

- (i) the invention relates directly to Introgen's business or to Introgen's actual or demonstrably anticipated research or development; or
- (ii) the invention results from any work performed by me for Introgen.

This definition of invention includes each and every invention and/or improvement that I may make or conceive, either solely or jointly with others, within one year after termination of employment for any reason with Introgen, if and to the extent the invention and/or improvement results from any work for Introgen, any use of Introgen's premises or property or any use of Introgen's confidential items or confidential information.

## **2. Protection of Confidential Information**

- (a) During the Employment Period or at any time thereafter, I will hold in strictest confidence and will not disclose, communicate or divulge to, or use for my own benefit or the benefit of another, any Confidential Information or Inventions.
- (b) Section 2 will not apply to any information which
  - (i) is or becomes publicly known under circumstances involving no breach by me of the terms of this Section 2, however, Confidential Information shall not be publicly known by reason of such information's or item's being available in isolated segments in two or more readily available public documents,
  - (ii) is generally disclosed to third parties by Introgen without restriction on such third parties, or
  - (iii) is approved for release by written authorization of the Board of Directors of the Company;

except that a breach by me of my obligations under this Section 2 shall not be absolved by the subsequent occurrence of any of the exceptions above.

- (c) All Confidential Information remains the property of Introgen at all times before, during and after the Employment Period. I will, upon termination of my employment at Introgen or at any other time upon request by Introgen, promptly deliver to Introgen all Confidential Information I may have in my possession, including but not limited to all Confidential Information relating to the business of Introgen. I understand that I must obtain Introgen's express, written permission with regards to any Confidential Information, if I wish to keep any copies of any Confidential Information after the termination of the Employment Period. I agree to, upon Introgen's request, certify to Introgen under oath that I have complied with the provisions of this section 2(c).
- (d) I shall submit to Introgen any proposed publication which contains any discussion relating to Introgen, any Confidential Information, or Invention of Introgen, or any work performed by me during the course of my employment with Introgen. Unless I am notified by Introgen that such publication contains Confidential Information within 90 days of receipt by Introgen of such publication, I may proceed with such publication. This provision extends to publications that are written and/or published after the termination of the Employment Period.
- (e) My employment with Introgen and performance of my duties and responsibilities as an employee do not and will not breach any agreement, which obligated me to keep in confidence any trade secrets or Confidential Information of any other party or to refrain from competing, directly or indirectly, with the business of any other party, and I shall not disclose to Introgen any trade secrets, Confidential Information of any other party.

### 3. Inventions and Patents

- (a) I have attached hereto as Exhibit A is a list describing all inventions, original works of authorship, developments, improvements and trade secrets which were made by me prior to my employment with Introgen (collectively, "Prior Inventions"), which belong to me, which relate to Introgen's proposed business, products or research and development, and which are not assigned to Introgen hereunder, or, if no such list is attached, I represent that there are no such Prior Inventions. If in the course of my Employment Term I incorporate into an Introgen product, process or machine a Prior Invention owned by me or in which I have an interest, Introgen is hereby granted and shall have a nonexclusive, royalty-free, irrevocable, perpetual, worldwide license to make,

have made, modify, use and sell such Prior Invention as part of or in connection with such product, process or machine.

- (b) Inventions shall be the property of Introgen. I hereby assign to Introgen or its designee all right, title and interest in and to any and all Inventions and any and all related patents, copyrights, trademarks, and trade names, and applications therefor, in the United States and elsewhere.
- (c) I will disclose to Introgen promptly all Inventions.
- (d) If I am employed in a technical capacity, I will maintain a laboratory notebook or equivalent record that is kept in accordance with standard scientific practices. This laboratory notebook will contain daily records of all laboratory protocols, procedures, studies, experiments, data, etc. and will document the conception and/or reduction to practice of any Invention. I will follow any guidelines and policies that Introgen presently has or implements in the future regarding the content, protection, or counter-signing or notarizing of laboratory notebooks. I understand that all laboratory notebooks and copies thereof are Introgen's property and that I may not have a copy of any laboratory notebook upon the termination of the Employment Period without the express written permission of Introgen, regardless of the circumstances of termination.
- (e) I shall, at Introgen's expense, execute declarations, further assignments, documents and other instruments as necessary or desirable to fully and completely assign all Inventions to Introgen or its designee and to assist Introgen or its designee in applying for, prosecuting and enforcing patents, copyrights or other intellectual property rights in the United States and in any foreign country with respect to any Invention. I understand that this obligation shall continue to exist after the termination of the Employment Period, regardless of the reasons for and circumstances of termination. If Introgen is unable because of my mental or physical incapacity or for any other reason to secure my signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Inventions assigned to Introgen as above, then I hereby irrevocably designate and appoint Introgen and its duly authorized officers and agents as my agent and attorney-in-fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by me.

4. Copyrightable Material

Without limiting the above, I specifically agree that all copyrightable materials generated or developed by me under this Agreement, including but not limited to advertising materials, product instructions, laboratory notebooks, experimental protocols, scientific publications, artistic and product designs, sketches, technical bulletins, computer programs, computer files, computer software, and computer databases, shall be considered works made for hire under the copyright laws of the United States and that they shall, upon creation, be owned exclusively by Introgen. To the extent that any such materials, under applicable law, may not be considered works made for hire, I hereby assign to Introgen the ownership of all copyrights in such materials, without the necessity of any further consideration, and Introgen shall be entitled to register and hold in its own name all copyrights in respect of such materials.

5. Consideration

I understand that consideration for this Agreement is furnished by Introgen's employing me and granting me access to Introgen's confidential materials so that I may perform those duties that render my employment of value to Introgen.

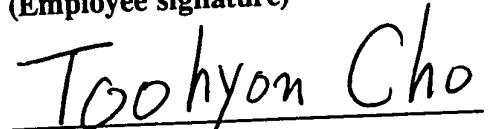
6. Miscellaneous

- (a) The terms of this agreement shall survive termination of Employment.
- (b) If any provision of the Agreement shall, for any reason be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.
- (c) The validity, construction, enforcement and interpretation of this Agreement shall be governed by the internal laws (and not the laws of conflicts) of the State of Texas. I hereby expressly consent to the personal jurisdiction of the state and federal courts located in the State of Texas for any lawsuit filed there against me by Introgen arising from or relating to this Agreement.
- (d) This Agreement shall be binding upon and inure to the benefit of me and Introgen and our respective heirs, executors, administrators, legal representatives, successors and assigns.

(e) This Agreement embodies the entire Agreement between Introgen and me in regards to the matters discussed herein, and hereby supersedes any previous Agreements between Introgen and me in regards to the matters discussed herein, and may be amended only by a written document executed by Introgen and me.



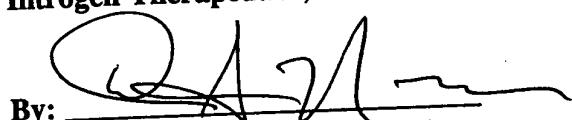
(Employee signature)



(Printed name)

Date: April 12, 1996

Agreed to and Accepted:  
Introgen Therapeutics, Inc.



By: \_\_\_\_\_  
(Authorized company signature)

Date: 4-1-96